

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )

Implementation of the )  
Telecommunications Act of 1996: )

CC Docket No. 96-115

Telecommunications Carriers' Use )  
of Customer Proprietary Network )  
Information and Other Customer )  
Information )

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**REPLY OF INTERMEDIA COMMUNICATIONS INC.**

Jonathan E. Canis  
Reed Smith Shaw & McClay  
1301 K Street, N.W.  
Suite 1100, East Tower  
Washington, D.C. 20005  
202-414-9483

Counsel for  
INTERMEDIA COMMUNICATIONS INC.

June 26, 1996

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## **SUMMARY**

Intermedia Communications Inc. ("ICI") urges the Commission to implement the customer proprietary network information ("CPNI") provisions of Section 222 of the Telecommunications Act of 1996 in a way that does not restrict the ability of competitive new entrants to provide innovative services and packages of services to the public. Specifically, any action taken by the Commission should be consistent with Section 271(e)(1) of the 1996 Act, which specifically grants carriers that serve less than five percent of the nation's presubscribed access lines authority to cross-market local and long distance service. If the Commission finds that its CPNI rules apply to small, competitive carriers, it should grant a blanket waiver of those rules to all carriers serving less than five percent of the country's presubscribed access lines.

At the same time, the Commission must reject arguments to eliminate the regulatory distinctions between dominant and nondominant carriers. The call for such drastic action -- which comes from dominant incumbent local exchange carriers -- is procedurally defective and grossly offensive to public policy. Both the Commission and state regulators have consistently and correctly held that regulation must be tailored to the market power of particular classes of carriers.

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**REPLY OF INTERMEDIA COMMUNICATIONS INC.**

Intermedia Communications Inc. ("ICI"), by its undersigned counsel and pursuant to the Commission's *NPRM*,<sup>1</sup> hereby submits its Reply to selected comments filed in the above-captioned proceeding. As a competitive service provider that offers local, exchange access and interexchange services on a facilities-based and resold basis across the country, ICI is critically concerned that the Commission implement the customer proprietary network information ("CPNI") protection provisions of the Telecommunications Act of 1996 ("1996 Act") in a way that does not adversely affect the ability of new competitive entrants to offer innovative services and combinations of services to the public.

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<sup>1</sup> *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, FCC 96-221, released May 17, 1996 ("*NPRM*").

**I. THE COMMISSION SHOULD REFRAIN FROM ANY ACTION THAT WOULD PREVENT SMALL CARRIERS FROM JOINTLY MARKETING THEIR LOCAL AND LONG DISTANCE SERVICES UNDER SECTION 271 OF THE ACT**

As a carrier that provides the full range of local , exchange access and interexchange services, ICI has aggressively positioned itself as a single source provider that can meet all of the telecommunications requirements of its customers. This full-service ability is a goal that ICI has pursued at considerable expense, and provides ICI with a critical edge in competing for customers. For this reason, ICI urges the Commission to refrain from any regulatory action that may restrict the ability of ICI (or any other competitive carrier) to offer innovative services or packages of services.

To this effect, if the Commission finds that rules restricting the use of CPNI apply to nondominant, competitive carriers, it should forbear from imposing such rules. In this regard, ICI agrees with the comments of MFS Communications Company ("MFS"). Specifically, MFS argues that CPNI rules adopted pursuant to Section 222 of the 1996 Act should not be permitted to frustrate the express purpose of Section 271(e)(1) of the Act, which specifically provides that small competitive carriers (those that serve less than five percent of the nation's presubscribed access lines) may jointly market their local, long distance and other services.<sup>2</sup> As MFS correctly notes, carriers with a *de minimis* market share are ill-positioned to abuse their customers' CPNI to anticompetitive effect. Indeed, any possible threat of abuse by nondominant carriers is more than offset

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<sup>2</sup> Comments of MFS Communications Company, Inc., at 8-10.

by the increase in customer choice that will result from entry by competitive carriers that are unrestricted in their ability to provide the full range of telecommunications services required by their customers.

If the Commission finds that the CPNI rules it adopts pursuant to Section 222 of the 1996 Act apply to small, competitive carriers, it should forbear from imposing such regulations. The preferred means of doing so is to issue a blanket waiver of the CPNI rules to all carriers that serve less than five percent of the presubscribed access lines in the country. Such a blanket waiver has been used by the Commission in the past,<sup>3</sup> and would provide an easily enforceable means of exempting those carriers that pose no risk of anticompetitive abuse.<sup>4</sup>

## **II. THE COMMISSION MUST RETAIN EFFECTIVE RESTRICTIONS ON ABUSE OF CPNI BY DOMINANT CARRIERS**

While small, competitive carriers provide no realistic threat of anticompetitive abuse of CPNI, substantial precedent exists that illustrates the need for continued regulation of the use of CPNI by dominant carriers. As noted in the *NPRM*, the

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<sup>3</sup> *E.g., Ameritech Operating Companies, Revisions to Tariff F.C.C. No. 2*, 8 FCC Rcd 5172 (1993); *Declaratory Ruling Concerning Waiver of the Loading Requirements in 47 C.F.R. § 21.710(d) for operations in the 10.7-11.7 GHz Frequency Band*, 11, FCC Rcd 1911 (1996).

<sup>4</sup> This concern for limiting unnecessary regulatory burdens on small, competitive carriers also compels the Commission to preempt state regulations that are more severe than the Commission's CPNI rules. The record contains substantial support from many different sectors of the industry for the proposition that state regulators should not be permitted to impose CPNI regulations that are more burdensome than those adopted by the Commission. *See, e.g.,* Comments of Bell Atlantic at 10; Comments of SBC Communications, Inc. at 20-21.

Commission has already found that regulatory restrictions on the use of CPNI by the Bell Operating Companies and other dominant carriers were necessary to protect independent enhanced service providers.<sup>5</sup> The demonstrated ability of the incumbent local exchange carriers (“ILECs”) not only requires the continued application of CPNI rules to these carriers, it militates against any relaxation of those rules.

Such considerations require the summary dismissal of arguments by the ILECs that demand identical regulatory treatment of ILECs and small competitive carriers. Bell Atlantic stakes out the most extreme position in this regard, stating that the Commission must eliminate the regulatory distinctions between dominant and nondominant carriers established in the Commission’s *Computer II* and *Computer III* proceedings.<sup>6</sup>

Bell Atlantic’s arguments must be rejected on both procedural and policy grounds. First, the dissolution of the *Computer II* and *Computer III* regime is nowhere implicated in the 1996 Act, and was never raised in the *NPRM* in the instant proceeding. The record of this proceeding simply does not contain adequate grounds to support the wholesale elimination of a Commission policy that has been a cornerstone of federal regulation for decades.

Even more importantly, as the Commission has long recognized, the disparate market power of dominant and nondominant carriers requires disparate regulatory structures. Moreover, only last year, the Commission reiterated its

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<sup>5</sup> *NPRM* at ¶ 4.

<sup>6</sup> Comments of Bell Atlantic at 9-10.

commitment to a regulatory structure that reflects the market power of specific classes of carriers.<sup>7</sup> This approach is also widely employed on the state level, and was recently confirmed by the New York Public Service Commission ("NYPSC") in an order adopted on May 22, 1996. In that order, the NYPSC found that:

The monopoly history of local exchange markets, combined with the present market power of the incumbents, may at times require different treatment of "incumbents" and "new entrants" to achieve a fair playing field for successful competition. \* \* \* Carriers under similar circumstances -- as determined by market power, control of bottleneck facilities or services, and the public interest -- should be regulated in a similar manner.<sup>8</sup>

Such a finding is fully consonant with the findings made by the Commission in the *Computer II* and *Computer III* proceedings, and is critically important now that competition for local services is beginning to emerge.<sup>9</sup> For all of these reasons, the Commission must reject calls to abandon a regulatory structure that reflects the market power of the regulated carriers.

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<sup>7</sup> *Southwestern Bell Telephone Company, Tariff F.C.C. No. 73*, 11 FCC Rcd 3613 (1996).

<sup>8</sup> NYPSC, *Proceeding on Motion of the Commission to Examine Issues Related to the Continuing Provision of Universal Service and to Develop a Regulatory Framework for the Transition to Competition in the Local Exchange Market*, Case 94-C-0095, Opinion No. 96-13, issued May 22, 1996, at 19.

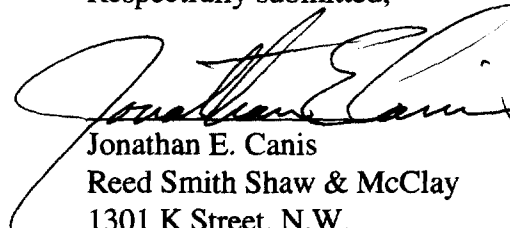
<sup>9</sup> See, e.g., Comments of Teleport Communications Group at 4-5; Comments of IntelCom Group at 3-4.



### III. CONCLUSION

For the reasons discussed above, ICI respectfully requests that, in implementing the Telecommunications Act of 1996, the Commission should not restrict the ability of new entrants to offer packages of local, exchange access and interexchange services. If the Commission does find that CPNI restrictions apply to new competitive entrants, it should forbear from imposing them by granting a blanket waiver of its CPNI rules to all carriers with less than five percent of the country's access lines.

Respectfully submitted,



Jonathan E. Canis  
Reed Smith Shaw & McClay  
1301 K Street, N.W.  
Suite 1100, East Tower  
Washington, D.C. 20005  
202-414-9483

Counsel for  
INTERMEDIA COMMUNICATIONS INC.

June 26, 1996

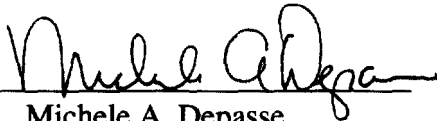
## **CERTIFICATE OF SERVICE**

I, Michele A. Depasse, hereby certify that the foregoing "*Reply of Intermedia Communications Inc.*" was sent, this 26th day of June, 1996, by hand delivery, to the following:

Regina Keeney, Chief  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 500  
Washington, D.C. 20554

Janice Myles  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 544  
Washington, D.C. 20554

International Transcription Services  
1919 M Street, N.W.  
Room 246  
Washington, D.C. 20554

  
Michele A. Depasse